

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District of New Mexico	
Name (under which you were convicted): Brandi Channon		Docket or Case No.: 1:13-CR-966-JCH-KK	
Place of Confinement: New Mexico (Probation)		Prisoner No.: N/A (Probation)	
UNITED STATES OF AMERICA		Movant (include name under which convicted) V. Brandi Channon	

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:
United States District Court, District of New Mexico
333 Lomas Blvd NW
Albuquerque, NM. 87110

- (b) Criminal docket or case number (if you know): 1:13-CR-966-JCH-KK

2. (a) Date of the judgment of conviction (if you know): 1/22/16
(b) Date of sentencing: 10/20/16

3. Length of sentence: 3 Years' Probation

4. Nature of crime (all counts):
18 USC § 1343, wire fraud (counts 2 & 4)
18 USC § 1349, conspiracy to commit wire fraud (count 1)

5. (a) What was your plea? (Check one)
(1) Not guilty ☒ (2) Guilty ☐ (3) Nolo contendere (no contest) ☐

6. (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☒ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☒ No ☐

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8. Did you appeal from the judgment of conviction? Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: Tenth Circuit Court of Appeals

(b) Docket or case number (if you know): 16-2285

(c) Result: Affirmed as to conviction, remanded as to forfeiture

(d) Date of result (if you know): 1/31/18

(e) Citation to the case (if you know):

(f) Grounds raised: Government improperly introduced evidence in violation of FRE 803(6)(b) and FRE 1006, and government failed to prove forfeiture

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☒ No ☐

If "Yes," answer the following:

(1) Docket or case number (if you know): 17-9236
Certiorari Denied

(2) Result:

(3) Date of result (if you know): 10/1/2018

(4) Citation to the case (if you know):

(5) Grounds raised:

Government improperly introduced evidence in violation of FRE 803(6)(b) and FRE 1006

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Tenth Circuit Court of Appeals

(2) Docket or case number (if you know): 16-2285

(3) Date of filing (if you know): 2/14/2018

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(4) Nature of the proceeding: Petition for rehearing, petition for rehearing en banc

(5) Grounds raised:

Government improperly introduced evidence in violation of FRE 803(6)(B) and FRE 1006

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐No ☒(7) Result: Petition for rehearing denied, petition for rehearing en banc denied(8) Date of result (if you know): 2/27/2018

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket of case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition:

Yes ☐No ☐

(2) Second petition:

Yes ☐No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

See Insert One for all grounds and supporting facts

GROUND ONE: _____

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☐

- (2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☐

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

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(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND TWO:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND THREE: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

See Insert Two for table of grounds and legal authorities.

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14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☒ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

Answered "Yes" to "Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the grounds you are challenging?". Tenth Circuit Court of Appeals, 19-2029, civil?, limited to forfeiture issue

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing:

Donald Kochersberger, 400 Gold Ave. SW #500, Albuquerque, NM 87102

(b) At the arraignment and plea:

Donald Kochersberger, 400 Gold Ave. SW #500, Albuquerque, NM 87102

(c) At the trial:

Todd Hotchkiss, CJA, 610 Gold Ave. SW #228, Albuquerque, NM 87102

(d) At sentencing:

Todd Hotchkiss, CJA, 610 Gold Ave. SW #228, Albuquerque, NM 87102

(e) On appeal:

Todd Hotchkiss, CJA, 610 Gold Ave. SW #228, Albuquerque, NM 87102

(f) In any post-conviction proceeding:

Todd Hotchkiss, CJA, 610 Gold Ave. SW #228, Albuquerque, NM 87102

(g) On appeal from any ruling against you in a post-conviction proceeding:

Todd Hotchkiss, CJA, 610 Gold Ave. SW #228, Albuquerque, NM 87102

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

Supreme Court denied certiorari on or about 10/1/2018.

* The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

Vacate judgment, set aside judgment, set aside convictions, conduct evidentiary hearings, appoint counsel, and/or
resentence

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion
under 28 U.S.C. § 2255 was placed in the ~~prison mailing system~~ on _____.

clerk's office

3/11/19
(month, date, year)

Executed (signed) on 3/11/19 (date)



Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.